

REMARKS

Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

Claims 2-7, 11-20, 30-33, 35, 37 and 44-56 were pending. Claims 44-54 were withdrawn as being directed to non-elected subject matter. Claims 2, 5-7, 16-20, 30-33, 35, 37, and 44-56 have been cancelled without prejudice to pursue in a future related application. With the cancellation of claim 2, Applicants have amended claim 3 (which had depended from claim 2) to rewrite claim 3 as an independent claim by incorporating language from claim 2. No new matter has been added. With the cancellation of claim 2, Applicants have amended claims 11, 12, 14, and 15 (each of which depended from claim 2 and claim 3) to depend only from claim 3. No new matter has been added. Therefore, claims 3, 4, and 11-15 are now pending in the subject application, with claims 3, 11, 12, 14, and 15 having been amended.

In the Office Action dated February 8, 2006, claims 2, 3, 5-7, 12-17, 30, 31 and 33 were rejected under 35 U.S.C. § 102(e) as allegedly lacking novelty over Lau (U.S. Patent No. 6,001,123). The Action states, in part, that Lau “discloses a device ... which releases growth factor for inducing the in vivo adhesion of the stent graft to vessel walls.” Applicants respectfully traverse this rejection.

In order to expedite allowance of certain embodiments of the invention, claims 2, 5-7, 16, 17, 30, 31, and 33 have been cancelled without prejudice, as set forth above. Accordingly, this rejection under Section 102(e) as applied to claims 2, 5-7, 16, 17, 30, 31, and 33 has been rendered moot.

The remaining claims under this rejection are claims 3 and 12-15. Claims 12, 14, and 15 directly, and claim 13 indirectly, depend from claim 3. Applicants submit that independent claim 3 does not read on any device disclosed by Lau. Claim 3 is directed to a device that comprises a vessel wall irritant. As noted above, the Action states that Lau “discloses a device ... which releases growth factor....” In this regard, Applicants’ attention is drawn in the Action to column 17, lines 26-67, of Lau where “growth factor” and examples thereof are disclosed. Applicants respectfully point out that Lau does not disclose or teach at column 17, lines 26-67, nor elsewhere in the disclosure, a stent graft comprising a vessel wall irritant in general, nor any specific examples thereof.

Therefore, it is believed that the rejection of claims 3 and 12-15 under 35 U.S.C. § 102(e) has been overcome. Reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner, upon further consideration, maintain this ground for rejection, Applicants respectfully request either documentary evidence supporting any assertion or implication that vessel wall irritant encompasses growth factor or an affidavit pursuant to 37 CFR § 1.104(d)(2) that supports the Examiner's personal knowledge of this be provided.

In the Office Action, claims 4, 11, 18-20, 32, 35, 37, 55, and 56 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Lau (U. S. Patent No. 6,001,123). Applicants respectfully traverse this rejection.

In order to expedite allowance of certain embodiments of the invention, claims 18-20, 32, 35, 37, 55, and 56 have been cancelled without prejudice, as set forth above. Accordingly, this rejection under Section 103(a) as applied to claims 18-20, 32, 35, 37, 55, and 56 has been rendered moot.

The remaining claims under this rejection are claims 4 and 11. Claims 4 and 11, as amended, now depend only from amended independent claim 3. Applicants submit that independent claim 3 itself, as well as claims 4 and 11 which depend therefrom, would not have been obvious (to one having ordinary skill in the art at the time of the claimed invention) over Lau.

As presented above in the discussion of the Section 102 rejection, Lau does not disclose or teach a stent graft comprising a vessel wall irritant in general, nor any specific examples thereof. Therefore, Lau does not disclose a stent graft of the methods presently claimed in claims 3, 4, and 11.

Furthermore, there is no teaching in Lau to even suggest a stent graft comprising a vessel wall irritant. For example, there is no teaching or suggestion at column 17, lines 26-67, or elsewhere, of Lau of the materials of claim 4.

As discussed above, Lau has not disclosed or suggested the use of vessel wall irritants generally or specifically. As noted, the Action has based the rejections on the disclosure by Lau of growth factors. Further, no references have been cited in the Action pertaining generally to vessel wall irritants, nor to their use. The Action, in the rejection of claim 4, asserts that the materials claimed in claim 4 are “the well-known adhesion materials or/and that induce adhesion in the art.” Further, rejection of claims 3 and 12-15 under Section 102, as discussed above, has been based on an implication that vessel wall irritants encompass the growth factors of Lau. It appears that the assertion that the materials of claim 4 are “well-known adhesion materials,” as well as the implication that vessel wall irritants correspond to growth factors, has been made on the basis of either an asserted common knowledge in the art or on the Examiner’s personal knowledge. It is not possible for Applicants to judge the applicability of any asserted or implied knowledge in the art to Applicants’ claimed invention without citation to such art. Should these grounds for rejection be maintained, Applicants respectfully request either documentary evidence that supports the assertions or implications or an affidavit pursuant to 37 CFR § 1.104(d)(2) that supports the Examiner’s personal knowledge.

Further, even if it is assumed for the sake of argument that a reference were cited to provide motivation for the incorporation and use of vessel wall irritants with the stent graft of Lau, there is still no reasonable expectation that such modification to the device of Lau could have been made without interfering with potentially beneficial properties of the device. For example, a key feature of the stent grafts of Lau is their ability to be folded and to exist in a folded state for insertion into a vessel lumen. Applicants submit that there is no reasonable expectation that incorporation of a vessel wall irritant, for example, metallic beryllium, could be successfully incorporated into the device without interfering with the purported benefits of the device of Lau.

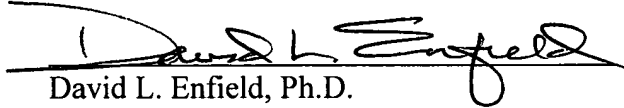
Applicants respectfully submit that the Patent Office has failed to establish a *prima facie* case for obviousness within the meaning of 35 U.S.C. § 103(a) for amended independent claim 3. It is thus believed that any rejection of claim 3 under Section 103(a) has been precluded and that rejection of amended claims 4 and 11 has been overcome. Reconsideration and withdrawal of this rejection are respectfully requested.

Therefore, in light of the amendments and remarks set forth above, Applicants believe that all the Examiner's rejections have been overcome. Reconsideration and allowance of the pending claims (3, 4, and 11-15) are respectfully requested. If there is any further matter requiring attention prior to allowance of the subject application, the Examiner is respectfully requested to contact the undersigned agent (at 206-622-4900) to resolve the matter.

The Director is authorized to charge any additional fees due by way of this Reply & Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

A handwritten signature in black ink, appearing to read "David L. Enfield", is written over a horizontal line.

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